IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.1220 OF 2006

Mohommed Siddique Mohd Ibrahim ...Petitioner

vs.

State of Maharashtra and others ...Respondents

Mr.V. S. Rajguru for the Petitioner
Mr.A.A.Kumbhakoni, Associate Advocate General with
Mr.Rajesh More, A.P.P. for State

CORAM: A.S.OKA,J.
DATE : SEPTEMBER 27,2006.

ORAL JUDGMENT:

1. Rule. Learned A.P.P. waives service. On the last two dates, I have extensively heard the submissions made by the learned Advocate for the Petitioner and the learned Associate Advocate General.

2. By this Petition under Article 226 and 227 of Constitution of India, the Petitioner has challenged the final bond dated 18th April 2006 taken by the second Respondent from the Petitioner under Chapter VIII of the Code of Criminal Procedure, 1973 (hereinafter referred to as the said Code). It will be necessary to refer to the facts of the case. The second respondent issued a show cause notice dated 24th March 2006 to the Petitioner calling upon the Petitioner to show cause as to why a bond of Rs.10,000/- for good behaviour should not be taken from the Petitioner. By the said show cause notice, the date of hearing was fixed as 31st March

2006. It is stated in the Petition that by exercising power under section 41(2) of the said Code, on 24th March 2006 the Petitioner and his family members were arrested and were produced before the second Respondent. At that time, they were served with the said show cause notice. The second Respondent released the Petitioner and was granted time to provide for bail pending the hearing of the proceedings. On 7th April 2006, the Petitioner produced surety before the second Respondent. He was made to sign several papers which were signed by the Assistant of the second Respondent. According to the Petitioner, the next date given was 18th April 2006. On that day, he was informed that the proceedings have been decided. His allegation is that interim and final bond were allegedly got executed from him.

3. The submission of the learned Counsel for the Petitioner is that the second Respondent has acted completely contrary to the provisions of the said Code and he has not at all abided by the decision of this Court in case of Vasant Kumar Jivrambhai Majithia Vs. State of Maharashtra and another [2005 All MR (Cri.) 2951]. He submitted that the second Respondent has not at all considered the decision of this Court in case of Surendra Ramchandra Taori Vs. State of Maharashtra and others [2001 (4) Mh.L.J. page 601].

4. The learned Associate Advocate General has produced a file of the proceedings for my perusal. He has also invited my

attention to the circular dated 28th April 2003 issued by the Home Ministry as well as further circular issued on 3rd September 2005. He relied upon the circular dated 4th January 2006 issued by the Home Department in the light of the decision of this Court in case of Vasant Kumar Majithia (supra). He submitted that the Officers who are exercising the powers under the said Chapter of the Code are scrupulously following the provisions of law.

5. In the present case, action has been purportedly taken under section 110(a) (g) of the said Code. It will be necessary to refer to paragraph 9 of the said decision in case of Vasant Kumar (supra) which reads thus :

> "9. The power under section 107 can be exercised when the Special Executive Magistrate receives an information that any person is likely to commit a breach of the peace or disturb the public tranquillity or to do any wrongful act that may probably occasions a breach of peace or disturb the public tranquillity. The said section further provides that if the Executive magistrate is of the opinion that there is sufficient ground for proceeding, he may in the manner provided in the Code require such person to show cause why he should not be ordered to execute a bond (with or without sureties) for keeping peace for such period, not exceeding one year, as the Magistrate deems fit.

Section 111 of the said Code mandates that when a Magistrate acting under section 107 deems it necessary to require any person to show cause, he shall make an order in writing setting forth the substance of the information received, the amount of the bond to be executed, the term for which it is to be in force. Section 113 provides that if such person to whom notice is intended to be issued is not present in Court, the Magistrate shall issue a summons requiring him to appear. In exceptional circumstances, the said section gives powers to the learned Magistrate to issue warrant of arrest. Section 114 mandates that every summons issued under section 113 shall be accompanied by a copy of the order made under section 111 and such copy shall be delivered by the officer serving or executing such summons or warrant to the person served with or arrested under the same. **Section 116 lays down the procedure for holding the inquiry. Under section 116, the Executive Magistrate is under obligation to make enquiry into the truth of the information upon which action has been taken and for that purpose he has to take such further evidence as may be necessary. Sub-section (2) of section 116 mandates that such an enquiry shall be made as nearly as may be practicable in the manner prescribed for conducting the trial and recording evidence in**

summons cases. Sub-section (3) provides that if the Magistrate considers that immediate measures are necessary for the prevention of a breach of the peace or disturbance of the public tranquillity or the commission of any offence or for the public safety, he may after commencement but before completion of the enquiry, for reasons to be recorded in writing direct the person in respect of whom the order section 111 has been made to execute a bond with or without surety for keeping peace or maintaining good behaviour until conclusion of the inquiry and may detain him in custody until such bond is executed or in default of execution, until the inquiry is conducted. (Emphasis supplied)

6. In the context of the said decision, the file of the proceedings was examined by me. I find that the preliminary order as contemplated by section 111 of the said Code has been passed. The first date fixed before the second Respondent was 31st March 2006.

On that day the Petitioner was present. He sought time to file a reply to the show cause notice. It is surprising to note that while granting time, the second Respondent appears to have made up his mind as the roznama records that he suggested to the Petitioner to execute an interim bond on the next date. The next date fixed was on 7th April 2006.

Roznama notes that the Petitioner was present on the next date and stated that he was not desirous of giving any reply to the show cause notice. It is recorded that the Petitioner voluntarily offered to give interim bond and brought the sureties. Accordingly, an order was made for taking the interim bond. The next date of hearing was fixed on 18th April 2006. Roznama of the proceedings makes interesting reading. The Roznama records that, Respondent Nos.1 to 3 in the proceedings were present. They informed the court that on the last date that they have executed the bonds and therefore they may be given a date. The Roznama records that They stated that on the last date interim bonds have been executed and final bonds are not executed. The roznama further records their contention that whether the final bonds are to be executed or not is to be decided after holding enquiry. It is further recorded that, they informed the court that they were desirous of going out of station and therefore the final bonds may be taken. It is also recorded that an application in writing to that effect was given by the Petitioner. Accordingly, an order was passed for furnishing final bonds. A letter submitted by the Petitioner is also on record. All that the Petitioner has stated is that he did not desire to say anything further and final bond may be taken.

7. The second Respondent has completely ignored that the order directing the parties to execute bond under section 110 of the said Code has serious consequences. Only because the

party offers to give bond, the same cannot be accepted. The requirement of law is that if the order is to be passed for directing a party to execute interim bond, the learned Magistrate is expected to record the reasons. Issuing directions for execution of interim bond cannot be an empty formality. Before passing an order for execution of final Bond, under section 116 of the said Code, the learned executive Magistrate is under an obligation to make an enquiry into the truth of the information upon which action has been taken and for that purpose, he has to take such further evidence as may be necessary. Sub-Section 2 of section 116 mandates that such enquiry shall be made as far as practicable by following a procedure prescribed by the Code for Summons triable cases. Thus, the order for execution of the final bond has to be passed only after holding an enquiry as to the truth of the information received by the learned executing Magistrate.

8. Section 117 of the said Code reads thus :

> 117. Order to give security - If, upon such inquiry, it is proved that it is necessary for keeping the peace or maintaining good behaviour, as the case may be, that the person in respect of whom the inquiry is made should execute a bond, with or without sureties, the Magistrate shall make an order accordingly: . Provided that -
>
> (a) no person shall be ordered to give security of

a nature different from, or of an amount larger than, or for a period longer than, that specified in the order made under section 111;

(b) the amount of every bond shall be fixed with due regard to the circumstances of the case and shall not be excessive;

(c) when the person in respect of whom the inquiry is made is a minor, the bond shall be executed only by his sureties.

Thus, the order cannot be passed on the ground that the party concerned has stated that he has nothing to say in the matter. The condition precedent for passing the order under section 117 is holding of an enquiry as provided under section 116 of the said Code. The learned Magistrate has to record his satisfaction that the person should be made to execute the bond as it is necessary for keeping peace or maintaining good behaviour. Therefore, after holding enquiry, the satisfaction as required by section section 117 has to be recorded.

9. In the present case, file of the proceedings shows that the learned Magistrate has acted very casually and without following the mandatory provisions of law. He has passed final order directing the parties to execute the bond. He has completely ignored that the said order has very serious

consequences which are provided under sections 122 and 123 of the said Code. It is also pertinent to note that no reason is recorded for directing the execution of interim bond.

Therefore, both the orders are illegal.

10. This court has repeatedly observed that the proceedings under Chapter VIII of the said Code are being conducted by the executive Magistrates without following mandatory requirements of law. In fact the circular dated 28th April 2003 issued by the Home Ministry gives all necessary directions to the learned executive Magistrates. However, the said directions are completely ignored in the present case. A direction has been incorporated in the said circular that unless there are exceptional circumstances, while conducting proceedings under Chapter VIII of the said Code, the Special executive Magistrate should not wear the police uniform and he must keep in mind that he is not acting as a Police Officer but he is acting as an Executive Magistrate. The all the directions given by the Home Ministry in the circular need not be reiterated in this order. It is expected that the Executive Magistrates will abide by the provisions of Chapter VIII of the said Code as well as the said directions in the circular issued on 28th April 2003.

11. Hence, I pass the following order :

i) Rule is made absolute in terms of prayer clause (a).

ii) Copy of this order be forwarded to the Secretary of the Department of Home, Government of Maharashtra, Mantralaya, Mumbai who is expected to issue necessary and appropriate directions to the concerned Officers.

JUDGE